MOTION FILED

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-444

NORTHEAST MARINE TERMINAL COMPANY, INC. AND STATE INSURANCE FUND, *Petitioners,*

v.

RALPH CAPUTO

AND

DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR, *Respondents.*

No. 76-454

INTERNATIONAL TERMINAL OPERATING CO., INC., *Petitioner,*

v.

CARMELO BLUNDO

AND

DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR, *Respondents.*

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

MOTION FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE AND BRIEF AMICUS CURIAE OF WEST GULF MARITIME ASSOCIATION

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MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE

The West Gulf Maritime Association moves the Court to grant it leave to file the attached Brief Amicus Curiae in support of the Petitioners in the above cases, and as grounds therefor would respectfully show:

1.

Petitioners in both cases have given their consent to its filing as has the Solicitor General of the United States on behalf of the Federal Respondent, Director, Office of Workers' Compensation Programs, Department of Labor. Counsel for the individual respondents has declined his consent. The written consent letters have been filed with the Clerk of this Court.

2.

The *Caputo* and *Blundo* cases are the first cases to be considered by this Court on the question of post-1972 shoreside jurisdiction under the Longshoremen's Act and are therefore likely to have a dramatic, if not completely final, precedential effect. Over 90% of the general cargo longshore gangs employed in the Port of Houston work on breakbulk cargo (bales of cotton, bags of rice, boxes or cartons of cargo), and the apparent factual importance of containerization in the New York area may tend in *Caputo* and *Blundo* to obscure the importance of breakbulk cargo practices to the jurisdictional question on a nationwide basis.

3.

Additionally, it appears from conferring with counsel for petitioners in both *Caputo* and *Blundo* that they will not present the significance of certain of this Court's holdings concerning the meaning of the term "maritime employment" in the Longshoremen's Act prior to the 1972 Amendment. This Amicus believes strongly that this Court's pre-Amendment definition of "maritime employment" was adopted by the Congress in the 1972

Amendments and was explicitly affirmed in the legislative history of those Amendments. The attached brief is offered to bring these authorities to the attention of the Court.

4.

The West Gulf Maritime Association is composed of some 66 stevedoring companies, steamship owners, agents and operators, and terminal freight handling companies located geographically from Lake Charles, Louisiana to Brownsville, Texas. Much of the employment provided by these companies is in the area adjoining navigable waters in the ports of the West Gulf area, and the jurisdictional reach ashore of the Longshoremen's and Harbor Workers' Compensation Act as amended in 1972 is of crucial significance to these employers. Indeed, on January 1, 1977, compensation insurance rates on policies already issued covering wholly shoreside employees working in the areas adjoining navigable waters were increased by 138% based solely on the decision of the Court of Appeals for the Fifth Circuit in the *Ford* and *Bryant* cases, both of which arose out of the West Gulf area, reported *sub nom Jacksonville Shipyards, Inc. v. Perdue,* 539 F.2d 533 (5th Cir. 1976), pet. for cert. applied for, *P. C. Pfeiffer Co., et al v. Diverson Ford, et al,* No. 76-641. This increase was made because the Fifth Circuit extended coverage of the Longshoremen's Act to all employees engaged solely in warehouse freight handling on areas adjoining navigable waters. Next to direct waterfront labor costs, the cost of workmen's compensation insurance is the next largest item of cost for the Association's members. Cargo transfer operations within the area adjoining navigable waters are the actual business of many of the members of the West Gulf Maritime Association, and the Association is vitally

concerned with the extension of federal jurisdiction into this area.

5.

The principal reason assigned by counsel for the individual respondents for declining to consent to the filing of the Amicus Brief was his opinion that "all legal issues involved" would be briefed by the National Association of Stevedores to whom he had given his consent for filing a brief amicus curiae. His belief in this regard is erroneous as counsel for the National Association of Stevedores also has advised that he does not plan to deal with the significance of this Court's pre-Amendment statements concerning "maritime employment." Therefore, the legal arguments contained in the attached brief apparently will not be presented to this Court through any other means save in the attached brief.*

6.

The West Gulf Maritime Association desires to suggest a simple two-question test which, if adopted, it believes would quickly, easily and precisely resolve substantially all, if not all, of the jurisdictional questions relating to shoreside injuries under the 1972 Amendments to the Longshoremen's Act in full accord with Congressional intent.

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* Counsel for the individual respondents also reasoned that the National Association of Stevedores represented "over 40 stevedoring and shipping companies from all areas of the United States," including some members of the West Gulf Maritime Association. While it is true that 12 of the 66 members of the West Gulf Maritime Association are also members of the National Association of Stevedores, there still remain 54 additional members of the West Gulf Maritime Association who have at least an equal, if not greater, stake in the resolution of the jurisdictional question in these cases.

WHEREFORE, the West Gulf Maritime Association respectfully prays that its motion for leave to file a Brief Amicus Curiae be granted.

Respectfully submitted,

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BRIEF AMICUS CURIAE OF WEST GULF MARITIME ASSOCIATION

STATEMENT OF INTEREST

The West Gulf Maritime Association is composed of some 66 stevedoring companies, steamship owners, agents and operators, and terminal freight handling

companies located geographically from Lake Charles, Louisiana to Brownsville, Texas. Much of the employment provided by these companies is in the area adjoining navigable waters in the ports of the West Gulf area, and the jurisdictional reach ashore of the Longshoremen's and Harbor Workers' Compensation Act as amended in 1972 is of crucial significance to these employers. Indeed, on January 1, 1977, compensation insurance rates on policies already issued covering wholly shoreside employees working solely in the areas adjoining navigable waters were increased by 138% based solely on the decision of the Court of Appeals for the Fifth Circuit in the *Ford* and *Bryant* cases, both of which arose out of the West Gulf area, reported *sub nom Jacksonville Shipyards, Inc. v. Perdue,* 539 F.2d 533 (5th Cir. 1976), pet. for cert. applied for, *P. C. Pfeiffer Co., et al v. Diverson Ford, et al,* No. 76-641. This increase was made because the Fifth Circuit extended coverage of the Longshoremen's Act to all employees engaged solely in warehouse freight handling on areas adjoining navigable waters. Next to direct waterfront labor costs, the cost of workmen's compensation insurance is the next largest item of cost for the Association's members. Cargo transfer operations within the area adjoining navigable waters are the actual business of many of the members of the West Gulf Maritime Association, and the Association is vitally concerned with the extension of federal jurisdiction into this area.

The *Caputo* and *Blundo* cases are the first cases to reach this Court on the question of post-1972 shoreside jurisdiction under the Longshoremen's Act and are therefore likely to have a dramatic, if not completely final, precedential effect. Over 90% of the general cargo long-

shore gangs employed in the Port of Houston work on breakbulk cargo (bales of cotton, bags of rice, boxes or cartons of cargo), and the apparent factual importance of containerization in the New York area, from which *Caputo* and *Blundo* arose, may tend to obscure the importance of breakbulk cargo practices to the jurisdictional question on a nationwide basis.

The West Gulf Maritime Association appreciates this opportunity to present its views to the Court and to suggest a simple two-question test which it believes would quickly, easily and precisely resolve substantially all, if not all, of the jurisdictional questions relating to shoreside injuries under the 1972 Amendments to the Longshoremen's Act in full accord with Congressional intent.

ARGUMENT

1. CARGO TRANSFER OPERATIONS AND THE LONGSHOREMEN'S ACT

The transfer of a quantity of any commodity (cargo) from point A to point C is fundamentally a repetitive movement from A to C of an increment of the commodity until the transfer is accomplished. The movement may be continuous from A to C or for convenience may be in stages from A to B and from B to C. For efficiency's sake, the person carrying the increment of the cargo may enlist the aid of other persons and form in effect a bucket brigade, passing each repeated increment of cargo from person to person until the final destination or a resting point at the end of the stage is reached. The transfer of waterborne cargo to or from land transportation is precisely such a movement.

The objective is to move increments of cargo between land transportation and water transportation. Typically, it is more convenient to move the cargo in stages, storing it for accumulation purposes near the water's edge since more increments of cargo can usually be carried aboard a ship than can be carried aboard any unit of land transportation. Inbound cargo coming into the port is typically moved from aboard the ship to the accumulation point (point of rest)[1] and then distributed from the accumulation point to the various units of land transportation. Conversely, outbound cargo going out of the port is accumulated from units of land transportation at a point in an area adjoining the water until a shipload is amassed, and the increments of cargo are then moved from the accumulation point of rest onto the ship.

In practice, a person carrying increments of cargo from the accumulation point of rest onto the ship and vice versa might pass back and forth between the ship and the dock many times in the course of his work. Similarly, a bucket brigade between the accumulation point of rest and the ship's hold would have some workers on the ship, some workers on the dock apron and some in the adjoining area at the accumulation point of rest. A worker might have any spot in the bucket brigade chain of employees and so might be on the ship or on the dock or in the adjoining area and still be doing the same work—loading or unloading the ship! Please refer to Figure I.

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1. This functionally significant point of rest is and has been well known on the waterfront as the dividing line where one group of workers stores cargo for another group to load onto land transportation if the cargo is inbound, or onto water transportation if it is outbound from the United States.

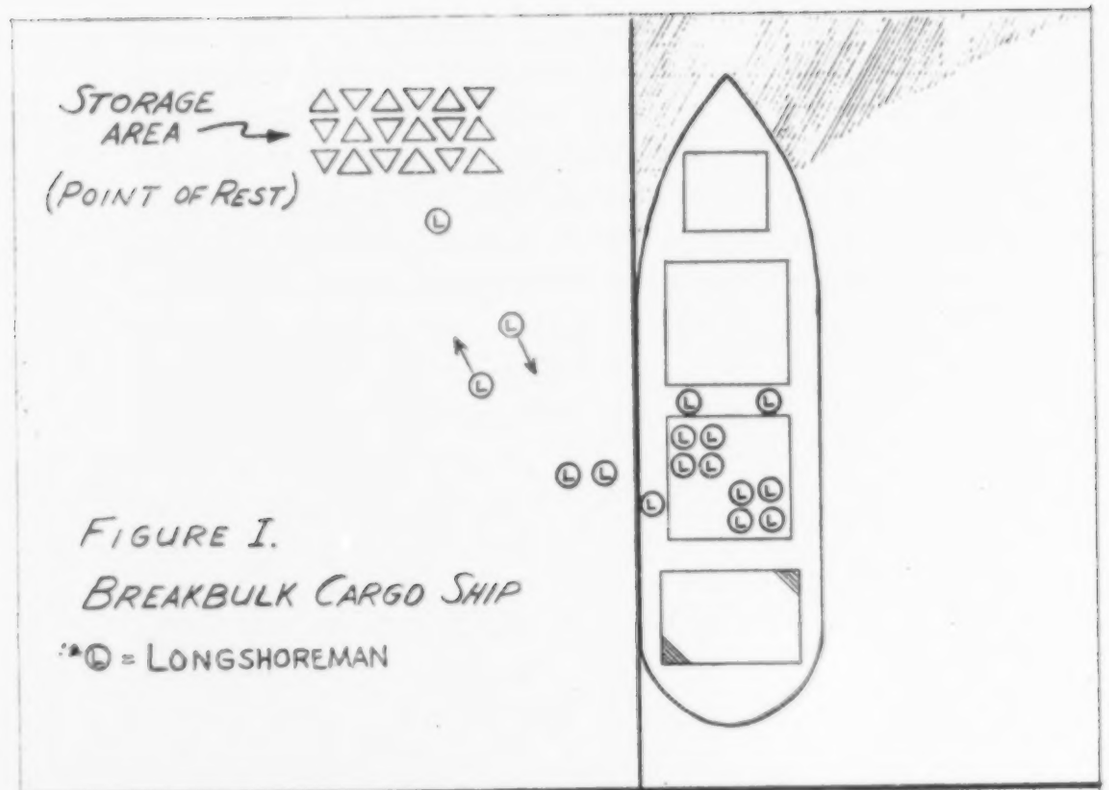


FIGURE I.
BREAKBULK CARGO SHIP

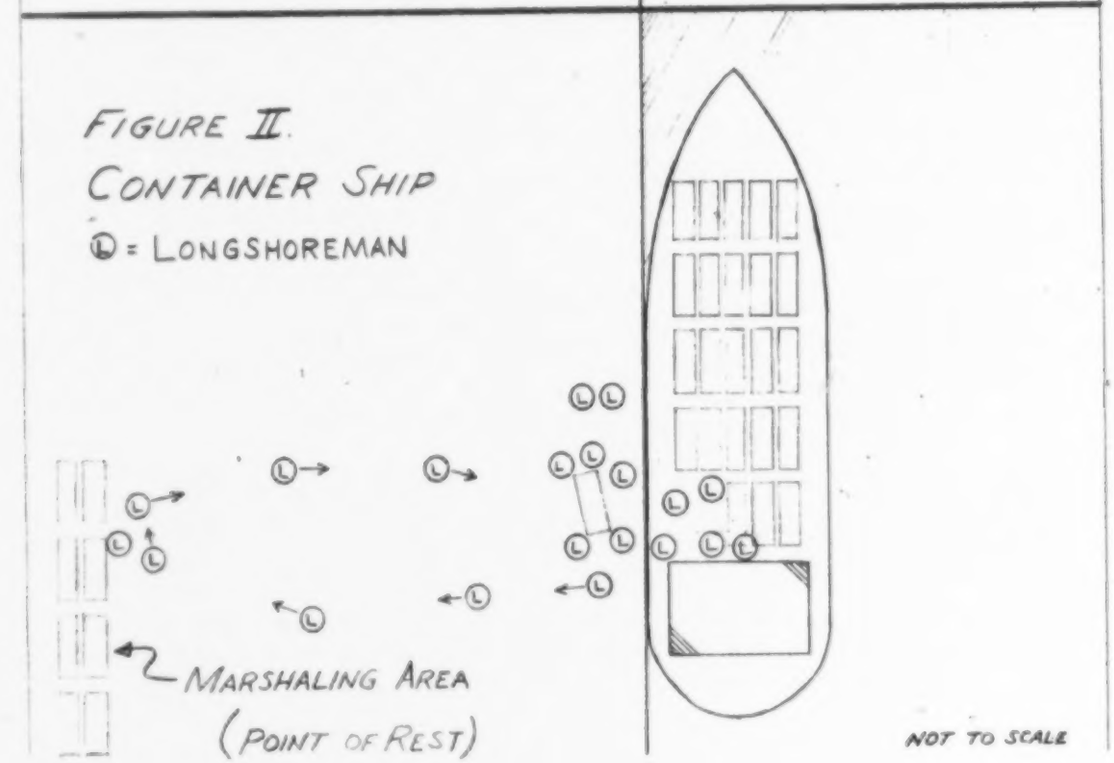


FIGURE II.
CONTAINER SHIP

In the West Gulf area, and nationwide as is shown in the National Association of Stevedores National Survey,[2] the modern workers in the sophisticated bucket brigade moving cargo from waterborne transportation to the accumulation point in the adjoining area are longshoremen, and the brigade itself is known as a longshore gang. Historically, many members of the longshore gang were most efficiently stationed aboard ship to break the increments of cargo out of the ship's hold and lift them onto the dock, where other members of the gang would move them to the accumulation point of rest in the adjoining area to await land transportation. Please refer to Figure I. The Longshoremen's & Harbor Workers' Compensation Act[3] was enacted by Congress in 1927 to provide a workmen's compensation remedy for those gang members stationed aboard ship where the state laws were incompetent to provide such a remedy.[4] The federal remedy applied only aboard ship,[5] and as the disparity between federal and state benefits grew, longshore gang members would have different remedies according to whether they were working aboard ship or ashore, and the remedy changed as the longshore gang members moved from ship to shore and back again. Moreover, with the advent of containerization, relatively more members of the longshore gang

2. National Association of Stevedores Survey, pp. 7a, *et seq.* of the Appendix to the Memorandum of National Association of Stevedores in Response to Petition for a Writ of Certiorari in No. 76-730 pending before this Court.

3. 33 U.S.C.A. §§ 901, *et seq.*

4. *Southern Pacific Co. v. Jensen,* 244 U.S. 205, 61 L.Ed. 1086, 37 S.Ct. 524 (1917); *State Industrial Commission v. Nordenholt Corp.,* 259 U.S. 263, 66 L.Ed. 933 (1922); *Nacirema Operating Co. v. Johnson,* 396 U.S. 212, 24 L.Ed.2d 371, 90 S.Ct. 347 (1969).

5. *Nacirema, supra.*

were most efficiently stationed on shore, outside the coverage of the more generous federal Longshoremen's Act, and thus the anomaly of one remedy for a longshore gang member while working aboard ship but a lesser remedy for the same man while working ashore was emphasized. Please see Figure II. The accumulation point of rest for containers is known as a marshalling area.[6]

The transfer of cargo, whether breakbulk or containerized, from the accumulation point of rest onto land transportation is not performed by the longshore gang bucket brigade anywhere in the United States. In the West Gulf it is performed by warehousemen working under a separate contract out of a union local separate and distinct from the longshore gang's contract and union local. In other parts of the country these workers are designated "extra labor," or terminal labor, but in no case are they part of the longshore gang.[7] These workers never go aboard a ship in the course of their work, and conceptually could not go aboard ship in the course of their work between the accumulation point of rest and the land transportation. See Figure III.[8] They are in an entirely

6. Containers are large metal boxes ranging in size up to forty feet in length and typically capable of being placed on wheels and functioning as a truck trailer. The contents of a container may or may not be removed from the container (or placed into the container) while in an area adjoining navigable waters, but a marshaling area accumulation point of rest is generally the place in the area adjoining the water to or from which containers are moved off of or onto a ship.

7. National Association of Stevedores Survey, cited above in note 2.

8. The representation in Figure III reflects the facts of the *Caputo* case, No. 76-444. The only participants in the truck loading were Caputo (standing on the truck), the truck driver (also on the truck), a checker (presumably near the truck), and a forklift operator (moving cargo to the truck from the accumulation point of rest where it had been stored by a longshore gang who had unloaded it from a ship some five days before). Appendix A in No. 76-444, p. 37.

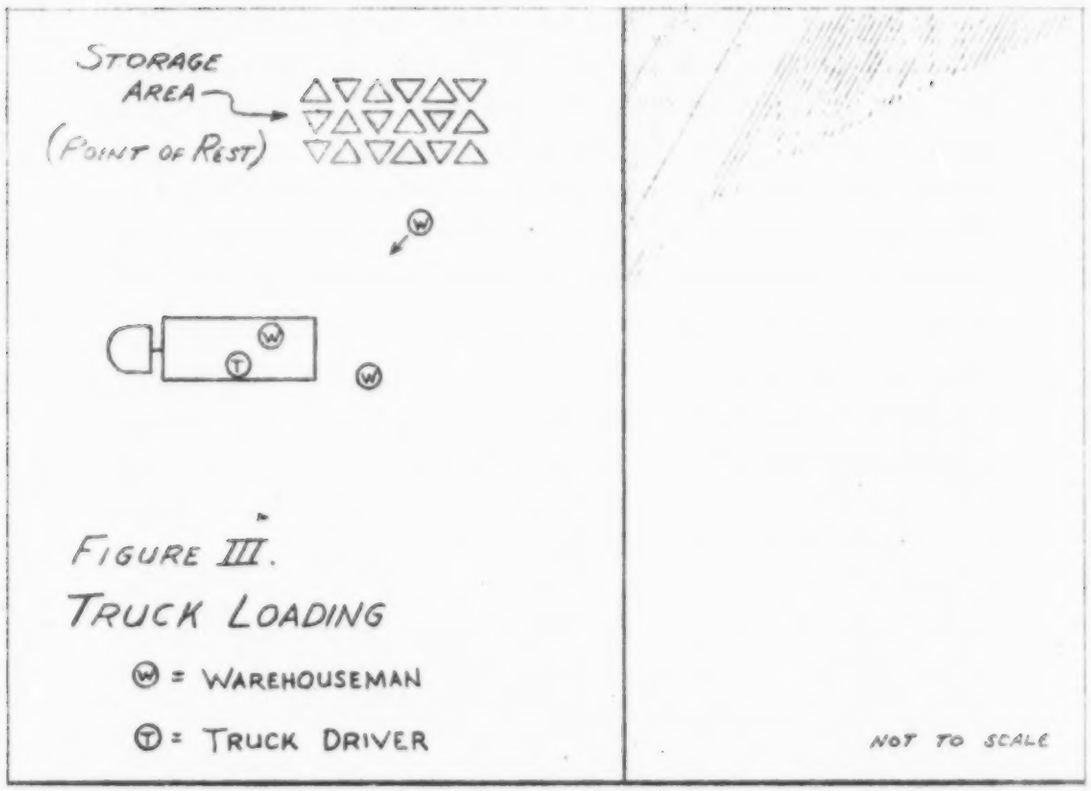


FIGURE III.
TRUCK LOADING

different bucket brigade (functioning as warehousemen) between the accumulation point of rest and the land transportation.[9] Such warehouse workers were never covered by the Longshoremen's Act, and so were never subject to the anomaly of two different compensation remedies.[10] In the present cases, Ralph Caputo (No. 76-444)

9. Sometimes cargo is moved directly between land and water transportation without being put down at any accumulation point on the dock or adjoining area. In such cases there is no warehouse function to be performed, and the longshore gang bucket brigade moves the cargo directly between the ship and the land transportation (either truck or railroad).

10. *Nacirema Operating Co. v. Johnson*, 396 U.S. 212, 24 L.Ed. 2d 371, 90 S.Ct. 347 (1969).

and Carmelo Blundo (No. 76-454) were functioning as warehousemen between the accumulation point of rest and the land transportation.[11]

2. MARITIME EMPLOYMENT AND THE AMENDED ACT

The 1972 Amendments to the Longshoremen's Act substantially increased the benefits under the federal act and would have exacerbated the water's edge anomaly recognized by the Court in *Nacirema*. Congress therefore undertook to cure that anomaly[12] by extending coverage shoreward into the adjoining area to cover longshore gang members all the way to the accumulation point of rest, which was the shoreward limit of activity for those subject to the pre-amendment anomaly. While this expanded the situs of Longshore Act coverage, Congress added the requirement of "maritime employment" to the definition of those employees eligible for the benefits of the Act. Why was this "maritime employment" STATUS requirement added? The answer is in order to restrict the expansion of coverage to those previously subject to the

11. This functional division of labor at the accumulation point of rest between the longshore gang (Figures I and II) and the warehouse group (Figure III) is not something dreamed up by an ingenious terminal operator or stevedore employer or its lawyer after the 1972 Amendments in an attempt to limit the Act's jurisdiction ashore. It has existed to counsel's own personal knowledge in the West Gulf since 1949, and has been explicitly spelled out in the West Gulf Maritime Association's (and its predecessor's) labor contracts with the deepsea longshore locals and the warehouse locals at least since 1934.

12. "The intent of the Committee is to permit a uniform compensation system to apply to employees who would otherwise be covered by this Act for part of their activity." S. Rep. 92-1125, H. Rep. 92-1441, 1972 U.S. Code Cong. and Administrative News, p. 4708, attached hereto as Addendum A, pp. 21-24.

pre-amendment non-uniformity anomaly, i.e., those having their remedy determined by the "fortuitous circumstance" of whether their injury occurred over water or on land, for this was the mischief which Congress intended to cure. That this was in fact the Congressional intention is clearly stated in the last two sentences of the Committee Reports from both the Senate and the House:

> ". . . Likewise, the Committee has no intention of extending coverage under the Act to individuals who are not employed by a person who is an employer, i.e. a person at least some of whose employees are engaged, in whole or in part, in some form of maritime employment. Thus, an individual employed by a person none of whose employees work, in whole or in part, on navigable waters is not covered even if injured on a pier adjoining navigable waters."

In these two statements, Congress makes it clear that in extending coverage of the Act ashore, (1) that an employer must be engaged in "maritime employment," and (2) that an employer is not engaged in "maritime employment" if none of his employees work, in whole or in part, on navigable waters even though his employees work on and are injured on an area ashore adjoining navigable waters. Thus, an employer who does only shoreside work, i.e. employs men to work only in the warehouse bucket brigade between the accumulation point of rest and land transportation is not engaged in "maritime employment." As the work the warehouse group is doing does not make their employer engaged in "maritime employment," it necessarily follows that the employees in the wholly shoreside warehouse group, such as Blundo and Caputo, are not engaged in "maritime employment."

This is precisely what this Court said the term "maritime employment" meant, first in 1930 in *Nogueira,*[13] and again in 1953 in *O'Rourke.*[14] In both cases, this Court expressly held that the term "maritime employment" as used in the Longshoremen's Act means *that employment at least a part of which is performed upon the navigable waters of the United States.* In *O'Rourke,* this Court held a railroad brakeman was engaged in "maritime employment" within the meaning of the Longshoremen's Act only because a part of his work on the date of his accident was performed on a car float on navigable waters. The majority opinion so held despite the vigorous protest of the dissenting justices that "If this railroad employee had been doing his braking job on land, no one would have thought he was engaged in anything but railroad employment," and that it did not "become maritime employment because it happened over navigable waters."[15]

O'Rourke was a reaffirmation of this Court's earlier decision in *Nogueira* in which it held that a railroad employee loading freight into railroad cars on a car float was in "maritime employment" within the meaning of the Act only because a part of his work on the day of the accident was upon the navigable waters of the East River in New York Harbor. The Court of Appeals for the Second Circuit in its opinion in *O'Rourke* had sought to limit and distinguish this Court's decision in *Nogueira* on the grounds that railroad employee Nogueira was en-

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13. *Nogueira v. New York, N.H. & H.R. Co.,* 281 U.S. 128, 74 L.Ed. 754, 50 S.Ct. 303 (1930).

14. *Pennsylvania R. Co. v. O'Rourke,* 344 U.S. 334, 97 L.Ed. 367, 73 S.Ct. 302 (1953).

15. *O'Rourke, supra,* dissenting opinion, 344 U.S. at 342, 97 L.Ed. at 374.

gaged in maritime employment because he was working as a freight handler in loading a "ship," whereas O'Rourke was doing the work of a railroad brakeman, duties which were "peculiar to the business of railroading alone." 194 F.2d 612, at 614. In holding that the work of both railroad employee Nogueira and railroad brakeman O'Rourke was "maritime employment" within the meaning of the Act solely because they were working on a car float on navigable waters, this Court in *O'Rourke* said:

> ". . . Whether the injury occurred to an employee loading freight into cars on the float, as in the Nogueira Case, or to one like respondent moving loaded cars from a float could make no difference. Both employments are maritime. See Nogueira v. New York, N.H. & H.R. Co., supra (281 U.S. at 134) . . ."[16]

It is perfectly clear, of course, that neither Blundo nor Caputo were engaged in "maritime employment" as thus defined by this Court and by Congress, as it is undisputed that the work they were doing with a warehouse gang at the time of their injuries would never require them or any other members of their warehouse group to do any work on navigable waters. It would follow, therefore, that if the only work their employers ever did was that which Blundo

16. This reaffirmation of the meaning of "maritime employment" in the Act by this Court is frequently overlooked because the Court in *O'Rourke* also made it clear that only the employer was required to meet the "maritime employment" test in that pre-1972 Amendment case, and held that even if O'Rourke himself could be labeled as only a railroad worker, the railroad was still an employer under the Act because it had other employees who satisfied the "maritime employment" requirement in the Act's definition of an employer. Once again, however, those other railroad employees who made the railroad an employer were found to be engaged in "maritime employment" only because a part of their work was performed upon navigable waters.

and Caputo were doing, their employers would never be engaged in "maritime employment" either.[17]

Prior to 1972, the employee had to meet only the situs test (injury on navigable waters), but in extending the Act's jurisdiction ashore, Congress added the requirement that the employee had to meet the same "maritime employment" status test which previously had to be met only by the employer.[18] In so doing it used precisely the same "maritime employment" term used previously in the Act. The legislative history of the 1972 Amendments demonstrates clearly that Congress did not intend to make any change in the meaning which this Court first gave to the term "maritime employment" in 1930. In the last two sentences hereinabove quoted from both Committee Reports,[19] Congress expressly states an employer is not engaged in "maritime employment" unless he has employees who work in the longshore gang bucket brigade, that is, in whole or in part on navigable waters. It therefore follows as night does the day, that employees such as Blundo and Caputo in the wholly shoreside warehouse group were not engaged in "maritime employment" be-

17. No contention appears in these cases that the respective employers were not "employers" within the meaning of the Act, apparently for the reason that each had other categories of employees who did actually work in part upon navigable waters.

18. 33 U.S.C.A. § 902(3).

19. For convenience here repeated:
". . . Likewise, the Committee has no intention of extending coverage under the Act to individuals who are not employed by a person who is an employer, i.e., a person at least some of whose employees are engaged, in whole or in part, in some form of maritime employment. Thus, an individual employed by a person none of whose employees work, in whole or in part, on navigable waters is not covered even if injured on a pier adjoining navigable waters." (Addendum A hereto, pp. 23-24)

cause the activity in which they were engaged for their employer at the time of the accident did not have to be performed in whole or in part on navigable waters.[20]

But these last two sentences in the Committee Reports are not the only ones which confirm that this Court's meaning of "maritime employment" was intended to be retained by Congress in extending the Act's jurisdiction ashore. Substantially all of the statements in the Committee Reports from both Houses of Congress, whether taken singularly or collectively, confirm that Congress intended to extend the Act's jurisdiction ashore only to those employees in the longshore group whose work is done in part on the navigable waters and in part on adjoining land areas:

1. "The Committee believes that the compensation payable to a longshoreman or a ship repairman or builder should not depend on the fortuitous circumstance of whether the injury occurred on land or over water." Addendum A, page 22.

   Only those employees in the longshore gang bucket brigade are subject to being assigned to

20. Thus, no new employers have been added to the coverage of the Act—all employers still have to have some employees engaged "in some form of maritime employment," that is, some employees who "work, in whole or in part, on navigable waters," and it is not enough if an employer simply has employees who work on or are injured only on piers adjoining navigable waters. After the 1972 Amendments, however, certain employees working on areas adjoining navigable waters may be covered, if they also meet this same "maritime employment" test—that is, only those employees engaged in the work of the employer which is performed in part upon navigable waters and in part on land come within the extended jurisdiction of the Act ashore.

work in whole or in part "over water" or "on land." None of the work of the warehouse function group is ever done "over water"—all is done solely "on land." Of necessity, therefore, no injury in the warehouse function group could ever occur "over water" and any such "fortuitous circumstance" could occur only to longshore gang enmployees.

2. "The intent of the Committee is to permit a uniform compensation system to apply to employees who would otherwise be covered by this Act for part of their activity." Addendum A, page 23.

   Obviously, a uniform compensation system exists now, as it did prior to the 1972 Amendments, for all of the warehouse function group as all of their work activities are performed solely on land. The lack of uniformity in benefits existed prior to the 1972 Amendments only for employees in the longshore group because a "part of their activity" on any given job could be over water and a part on land. The holding of the Court below in *Caputo* would destroy the very uniformity which Congress sought to establish by making the Longshore Act applicable to Caputo, but inapplicable to the consignee's truck driver who was working with Caputo in loading the truck. The assigned reason for doing so was that at other times and other places and on other days Caputo did in fact work in a longshore group in loading and unloading vessels, but because the truck driver apparently did not work at other times in a longshore group, he would be covered by the New York Compensation Act and not the Longshoremen's Act. Prior to the 1972

Amendments, both Caputo and the truck driver were uniformly covered by the compensation system of the State of New York while working together to load a truck under the circumstances here involved. Surely Congress evidenced no intent to provide a uniform compensation system for the longshore bucket brigade at the expense of destroying that uniformity for the warehouse function group! Only the application of this Court's Congressionally approved meaning of "maritime employment" provides a uniform system of compensation for the longshore group while leaving the warehouse group's pre-amendment uniform compensation system unaffected. No such non-uniformity has ever existed for the employees in the warehouse group because their work is confined, and always has been, to the landward side of the water's edge.

3. "To take a typical example, cargo, whether in break bulk or containerized form, is typically unloaded from the ship and immediately transported to a storage or holding area on the pier, wharf, or terminal adjoining navigable waters. The employees who perform this work would be covered under the bill for injuries sustained by them over the navigable waters or on the adjoining land area." Addendum A, page 23.

   Congress clearly describes only the work of the longshore gang bucket brigade in this example of the extent to which it intended to cover shoreside injuries, because the work of the warehouse function group never involves unloading cargo from a ship and immediately transporting it to a storage

   or holding area on the pier (the accumulation point of rest).

4. "The Committee does not intend to cover employees who are not engaged in loading, unloading, repairing, or building a vessel just because they are injured in an area adjoining navigable waters used for such activity." Addendum A, page 23.

   Injury "on land" in an adjoining area where all the work of the warehouse group is performed is not enough—the employee must be engaged in loading or unloading "a vessel,"—the work done only by the longshore gang bucket brigade.

5. "Thus, the employees whose responsibility is only to pick up cargo for further transshipment would not be covered, nor would purely clerical employees whose jobs do not require them to participate in the loading or unloading of cargo." Addendum A, page 23.

   After the cargo has been "unloaded from the ship and immediately transported to a storage or holding area," by the longshore group (paragraph 3 above), Congress here states that the employees in the warehouse group who pick it up and load it on land transportation for transshipment inland are not covered, obviously because they do no work "over water" anymore than the purely clerical workers whose jobs do not require them to participate in the work of the longshore group loading or unloading the cargo from the ship.

6. "However, checkers, for example, who are directly involved in the loading or unloading functions are

covered by the new amendment." Addendum A, page 23.

Cargo checkers who work with the longshore gang bucket brigade are *"directly involved"* in loading or unloading cargo from a ship and thus perform a part of their work "over water" and a part "on land." For this reason only, Congress states its intent for them to be covered by the extension of jurisdiction ashore. Obviously, any cargo checkers, such as Blundo, who were working with a warehouse group are not *"directly involved"* in loading or unloading cargo from a ship and therefore would not be covered. Blundo could not possibly have been so *"directly involved"* as no ships are loaded or unloaded at the pier where he was injured.

In all six of the above quoted portions from the Committee Reports, Congress makes it clear that if the work of the employer which is being done by his employees requires those employees to work in whole or in part upon navigable waters (longshore gang bucket brigade), then, and only then, does it intend for the 1972 Amendments to make the Longshoremen's Act applicable to any injuries sustained by those employees whether "over water" or "on land" in an adjoining area. All six likewise make it clear that if the employer's work does not require its employees to work in whole or in part on navigable waters (warehouse function group), Congress does not intend to make the Act applicable to any injuries sustained by those employees even if they are injured in an area adjoining navigable waters.

3. THE TEST FOR SHORESIDE COVERAGE UNDER THE LONGSHOREMEN'S ACT

To summarize the foregoing position, Congress intended the post-amendment Longshoremen's Act to cover injuries ashore only to those persons which the pre-amendment Act had covered in part—only those persons who did not have a uniform compensation remedy prior to the 1972 Amendments. In the usual case, therefore, anyone whose work could require him to go on navigable waters and thus within the pre-amendment coverage of the Act will now be covered in the adjoining area shore. On the other hand, the mere fact of one's employment in an area adjoining navigable waters is not sufficient to invoke the coverage of the Act—the "maritime employment" status test which the employee must now meet requires that the work activity in which the employee was participating must have been done at least in part on navigable waters.

Thus, the test of shoreside coverage under the Longshoremen's Act resolves itself into two simple questions:

1. Did the activity in which the group of employees were directly involved at the time of the worker's injury have to be performed in whole or in part on navigable waters?

   If so, any of the group of employees would have been subject to assignment within the pre-amendment coverage of the Act on navigable waters, and so all were in maritime employment within the meaning of the Act and all were within the Act's post-amendment coverage whether injured aboard ship or in the adjoining area ashore.

2. Did the injury occur on an adjoining pier, etc?

   If so, and question 1 above is satisfied, the Longshoremen's Act applies to the injury ashore by virtue of the 1972 Amendments.

Such a simple two question test will quickly, easily and precisely resolve substantially all, if not all, of the jurisdictional questions relating to shoreside injuries under the 1972 Amendments in full accord with Congressional intent. The West Gulf Maritime Association respectfully commends it to the Court as the appropriate rule of law for those cases.

CONCLUSION

As the first question must be answered in the negative in both *Caputo* and *Blundo,* it is respectfully submitted that the decision of the Court of Appeals must be reversed and a judgment rendered that their injuries were not sustained within the jurisdiction of the Longshoremen's Act as amended in 1972.

Respectfully submitted,

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ADDENDUM A

S. Rep. 92-1125, pp. 12-13; H. Rep. 92-1441, pp. 10-11;
1972 U. S. Code Cong. and Administrative News
pp. 4707-4708

EXTENSION OF COVERAGE TO SHORESIDE AREAS

The present Act, insofar as longshoremen and ship builders and repairmen are concerned, covers only injuries which occur "upon the navigable waters of the United States." Thus, coverage of the present Act stops at the water's edge; injuries occurring on land are covered by State Workmen's Compensation laws. The result is a disparity in benefits payable for death or disability for the same type of injury depending on which side of the water's edge and in which State the accident occurs.

To make matters worse, most State Workmen's Compensation laws provide benefits which are inadequate; even the better State laws generally come nowhere close to meeting the National Commission on State Workmen's Compensation Laws recommended standard of a maximum limit on benefits of not less than 200% of statewide average weekly wages. The following are the maximum limits on the compensation payable for permanent total disability in some maritime States:

California	$70.00
Florida	56.00
Hawaii	112.50
Louisiana	49.00
Maryland	85.68
Massachusetts	[1] 77.00
New Jersey	101.00
New York	80.00
Oregon	62.50
Pennsylvania	60.00
Texas	49.00

[1] Plus $6 for each dependent.

Also, under the laws of some states due to exemptions based upon the number of employees hired some workers might be uncovered in the event they are unfortunate victim of an injury.

It is apparent that if the Federal benefit structure embodied in Committee bill is enacted, there would be a substantial disparity in benefits payable to a permanently disabled longshoreman, depending on which side of the water's edge the accident occurred, if State laws are permitted to continue to apply to injuries occurring on land. It is also to be noted that with the advent of modern cargo-handling techniques, such as containerization and the use of LASH-type vessels, more of the longshoreman's work is performed on land than heretofore.

The Committee believes that the compensation payable to a longshoreman or a ship repairman or builder should not depend on the fortuitous circumstance of whether the injury occurred on land or over water. Accordingly, the bill would amend the Act to provide coverage of long-

shoremen, harbor workers, ship repairmen, ship builders, shipbreakers, and other employees engaged in maritime employment (excluding masters and members of the crew of a vessel) if the injury occurred either upon the navigable waters of the United States or any adjoining pier, wharf, dry dock, terminal, building way, marine railway, or other area adjoining such navigable waters customarily used by an employer in loading, unloading, repairing, or building a vessel.

The intent of the Committee is to permit a uniform compensation system to apply to employees who would otherwise be covered by this Act for part of their activity. To take a typical example, cargo, whether in break bulk or containerized form, is typically unloaded from the ship and immediately transported to a storage or holding area on the pier, wharf, or terminal adjoining navigable waters. The employees who perform this work would be covered under the bill for injuries sustained by them over the navigable waters or on the adjoining land area. The Committee does not intend to cover employees who are not engaged in loading, unloading, repairing, or building a vessel, just because they are injured in an area adjoining navigable waters used for such activity. Thus, employees whose responsibility is only to pick up stored cargo for further trans-shipment would not be covered, nor would purely clerical employees whose jobs do not require them to participate in the loading or unloading of cargo. However, checkers, for example, who are directly involved in the loading or unloading functions are covered by the new amendment. Likewise the Committee has no intention of extending coverage under the Act to individuals who are not employed by a person

who is an employer, i.e. a person at least some of whose employees are engaged, in whole or in part in some form of maritime employment. Thus, an individual employed by a person none of whose employees work, in whole or in part, on navigable waters, is not covered even if injured on a pier adjoining navigable waters.